

Assembly Bill No. 401

CHAPTER 103

An act to amend Section 22064 of the Financial Code, relating to financial institutions.

[Approved by Governor August 5, 2009. Filed with
Secretary of State August 6, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 401, Ruskin. Financial institutions: finance lenders: exemptions.

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders, as defined, by the Commissioner of Corporations and prohibits a person from engaging in the business of a finance lender or broker without a license. Until January 1, 2010, existing law exempts from its requirements a program-related investment by a private foundation, tax-exempt organization, and a loan, guaranty, or investment made by a public charity, tax-exempt organization meeting specified requirements.

This bill would eliminate the January 1, 2010, sunset provision, allowing the exemptions to continue indefinitely.

The people of the State of California do enact as follows:

SECTION 1. Section 22064 of the Financial Code is amended to read: 22064. (a) This division does not apply to the following:

(1) A program-related investment defined in subsection (c) of Section 4944 of the Internal Revenue Code and United States Treasury Regulations Section 53.4944-3 that is made by a private foundation, tax-exempt organization within the meaning of Section 509(a) of the Internal Revenue Code.

(2) A loan, guaranty, or investment made by a public charity, tax-exempt organization within the meaning of paragraph (1), (2), or (3) of subsection (a) of Section 509 of the Internal Revenue Code that meets all of the following requirements:

(A) The primary purpose of the loan, guaranty, or investment is to accomplish one or more of the exempt purposes of the public charity making the loan, as described in Section 170(c)(2)(B) of the Internal Revenue Code.

(B) Neither the production of income nor the appreciation of property is a significant purpose of the loan, guaranty, or investment.

(C) No purpose of the loan, guaranty, or investment is to accomplish one or more of the purposes described in Section 170(c)(2)(D) of the Internal Revenue Code.

(b) Subdivision (a) shall not exempt from the provisions of this division a tax-exempt organization that is making consumer loans as defined in Sections 22203 and 22204.

(c) A loan that is secured by any assets owned by an individual shall be exempt under subdivision (a) only if the individual providing the security is an “accredited investor” as defined in paragraph (5) or (6) of subsection (a) of Section 230.501 of Title 17 of the Code of Federal Regulations. Property held by an individual for personal, family, or household purposes, including an individual’s personal residence, may not be taken as security for a loan.

(d) A program-related investment by a private foundation, and any loan, guaranty, or investment made by a public charity that is exempt under subdivision (a) is subject to the implied covenant of good faith and fair dealing under Section 1655 of the Civil Code.

(e) (1) Subdivision (a) shall exempt from the provisions of this division a program-related investment by a private foundation, or a loan, guaranty, or investment by a public charity, only if the following conditions are satisfied:

(A) The organization making the program-related investment, loan, guaranty, or investment is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code and is organized and operated exclusively for one or more of the purposes described in Section 501(c)(3) of the Internal Revenue Code.

(B) No part of the net earnings of the organization making the program-related investment, loan, guaranty or investment inures to the benefit of a private shareholder or individual.

(C) No broker’s fee will be paid in connection with the making of the program-related investment, loan, guaranty, or investment or placement of the program-related investment, loan, guaranty or investment.

(2) This subdivision does not prohibit the organization making the program-related investment, loan, guaranty, or investment from charging interest on the loan or investment or fees on the guaranty.

(f) Subdivision (a) shall only exempt from the provisions of this division a program-related investment by a private foundation or a loan, guaranty, or investment by a public charity that is made for the primary purpose of accomplishing one or more of the organization’s exempt purposes described in Section 501(c)(3) of the Internal Revenue Code, and no significant purpose of which is the production of income or the appreciation of property within the meaning of subsection (c) of Section 4944 of the Internal Revenue Code. A recipient shall be required to use all funds received from the private foundation or the public charity only for the charitable purposes for which the program-related investment, loan, guaranty, or investment was made.

(g) Subdivision (a) shall only exempt from the provisions of this division a program-related investment by a private foundation or a loan, guaranty, or investment by a public charity if the organization consummates not more than 35 loans in a calendar year. In the making and negotiating of these loans, the private foundation or public charity shall take into consideration

the financial ability of the recipients to repay the loans in the time and manner provided.

(h) Nothing in this section is intended to abrogate or diminish the application of any other applicable laws that are designed to govern the tax-exempt organizations described in subdivision (a), including, but not limited to, laws pertaining to recordkeeping and reporting to the Attorney General and the Internal Revenue Service or to protect borrowers, including, but not limited to, laws pertaining to licenses, unfair competition, usury, and conflicts of interest.

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